

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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In re:	: Chapter 11
	: Case No. 14-13200 (SHL)
AEREO, INC.,	:
	:
<i>Debtor.</i>	:
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**BROADCASTERS' RESPONSE TO DEBTOR'S PROPOSED SUPERSEDING ORDER  
(I) APPROVING BIDDING PROCEDURES; (II) ESTABLISHING CERTAIN RELATED  
DEADLINES; AND (III) GRANTING RELATED RELIEF**

Aereo, Inc. ("Aereo") did not provide its Proposed Superseding Order (I) Approving (I) Bidding Procedures; (II) Establishing Certain Related Deadlines; and (III) Granting Related Relief (Dkt. No. 166) to the Broadcasters<sup>1</sup> for review and comment prior to submitting it to this Court. While in large part acceptable, Aereo's proposed order fails to take into account that Aereo has not submitted any actual sale of its assets to this Court for its approval and the Broadcasters' objections to any actual sale are thus reserved. *See* Broadcasters' (1) Status Report Regarding Debtor's Delivered Material and (2) Request that the January 27 Hearing Be Taken Off Calendar, Dkt. No. 169, at 2-3; *see also* Broadcasters' Motion to Stay or Continue Sale Motion or Alternatively, Objection to the Sale Motion, Dkt. No. 60, at 13. Accordingly, the Broadcasters respectfully submit the attached revised proposed order reflecting, at the end of paragraph 7(j), that the Court has not yet considered any actual sale and thus any objections to the sale are preserved. This clarification is necessary and critical because Aereo has filed

<sup>1</sup> Broadcasters are WNET, THIRTEEN, Fox Television Stations, Inc., Twentieth Century Fox Film Corporation, WPIX, LLC, Univision Television Group, Inc., The Univision Network Limited Partnership, Public Broadcasting Service, American Broadcasting Companies, Inc., Disney Enterprises, Inc., CBS Broadcasting Inc., CBS Studios Inc., NBCUniversal Media, LLC, NBC Studios, LLC, Universal Network Television, LLC, Telemundo Network Group LLC, WNJU-TV Broadcasting LLC, KSTU, LLC, KUTV Licensee, LLC and Fox Broadcasting Company.

statements with Judge Nathan in which Aereo has represented that this Court's original December 24, 2014 Order (1) Approving (I) Bidding Procedures; (II) Establishing Certain Related Deadlines; and (III) Granting Related Relief (Dkt. 110) rendered the Broadcasters' motion to withdraw the reference of Aereo's sales motion moot. *See* Notice of Mootness, *ABC, Inc., et al. v. Aereo, Inc.*, 14-cv-09829 (S.D.N.Y), Dkt. No. 22. Aereo's representations are inconsistent with the Court's intent in entering the December 24 order in which it approved sales procedures, but not any actual sale, as reflected by the record of the December 19 hearing. *See, e.g.*, 12/19/14 Tr. 120:20-121:7 ("I'm mindful of what I'm not doing today. I am not approving a sale. I am not identifying any particular assets that are sold. I have no idea really what the particular assets that might be sold, but also how anybody intends to use them. And those are all issues that will be addressed at another date. And so I don't think anything of what we're doing today in any way impacts the merits of the motion or the briefing that was mentioned by the broadcasters about discussion as to whether there were -- about the lawfulness or unlawfulness of time lapsing transmission of copyrighted broadcasts, an issue that I'm sure I'm not saying exactly right, but has not yet been briefed but that would be briefed and considered by Judge Nathan."); *id.* at 122:10-13 ("But right now, nothing that's being done will affect the broadcasters' substantive rights to argue whatever they want to argue on these issues.").

The Broadcasters' proposed order also (1) adds a clarification at the beginning of paragraph 7(g) to reflect that Aereo has already waived its authenticity and validity objections regarding the Broadcasters' use of the Delivered Materials in any proceeding [*see, e.g.*, Dkt. No. 110, para. 7(f)], and (2) provides in paragraph 7(h) that there must be a further order of this Court before Aereo may dispose of the Excluded Assets.

The Broadcasters respectfully request that the Court enter the their proposed order

instead of the one submitted by Aereo. As noted above, the only difference between the two are clarifications added to paragraphs 7(g), 7(h) and 7(j). For easy identification, the Broadcasters' clarifications are highlighted in yellow on the attached redline. See Exhibit A, A clean version of the Broadcasters' proposed order is attached as Exhibit B.

Respectfully submitted,

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Dated: January 26, 2015  
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